

## **GUIDANCE ON REMOTE HEARINGS** **for all business heard in the County and Magistrates' Court Tiers**

### **1. Definition and Scope**

- 1.1 This Protocol seeks to provide guidance for all participants in the conduct of remote hearings in all courts other than the Court of Judicature and Crown Court<sup>1</sup> in order to establish appropriate standards and ensure the observance of best practice and the proper facilitation of the administration of justice.
- 1.2 A remote hearing is one in which some or all of the judge, parties, legal representatives, press and interested parties ('participants') do not attend physically at the same location and normally involves some form of video link facility (typically this will be Sightlink) or telephone communication. This is not intended to be an exhaustive definition and the term "remote hearing" should be construed and applied liberally, flexibly and responsively, in accordance with Schedule 27 of the Coronavirus Act 2020.

### **2. Governing Principles**

- 2.1 Every remote hearing should be planned and conducted in a manner designed to secure every party's right to a fair hearing. In this respect, the court must ensure that all participants are able to see and hear all other participants (for a video hearing) or hear the other participants (for an audio hearing)<sup>2</sup>.
- 2.2 The planning and conduct of every remote hearing should replicate, as far as practicably possible and with all modifications deemed appropriate by the court, the conventional form of hearing in the court in question.
- 2.3 The normal duties owed to the court by every party, legal representative and other participants apply fully in the planning and conduct of every remote hearing.
- 2.4 Every remote location attended by the participants in a remote hearing forms part and is an extension of the court. All participants must conduct themselves accordingly.

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<sup>1</sup> Refer to [Interim Practice Direction 01/2020 \[REV 2\]](#) issued 17 December 2021 for Court of Judicature and Crown Courts

<sup>2</sup> See [Schedule 27 of the Coronavirus Act 2020](#): Part 1 Paragraph 6 and Part 3 Paragraphs 9 – 14

- 2.5 Diligent compliance with all regulatory and procedural requirements - particularly rules of court<sup>3</sup> as well as the directions in this Guidance, all pre-hearing orders and directions and all directions of the presiding judge - is essential.
- 2.6 The overriding objective set out, where applicable, in the statutory rules or case management protocols governing the courts coming within the scope of this Guidance apply to the planning and conduct of every remote hearing.<sup>4</sup>

<sup>3</sup> Viz.: 1. [County Court Rules \(Northern Ireland\) 1981](#); 2. [Magistrates' Courts Rules \(Northern Ireland\) 1984](#); 3. [Family Proceedings Rules \(Northern Ireland\) 1996](#); 4. [Magistrates' Courts \(Children \(Northern Ireland\) Order 1995\) Rules \(Northern Ireland\) 1996](#); [Magistrates' Courts \(Domestic Proceedings\) Rules \(Northern Ireland\) 1996](#); and, [Magistrates' Courts \(Domestic Proceedings\) \(Amendment\) Rules \(Northern Ireland\) 1999](#).

<sup>4</sup> Thus, e.g.:

[I] The overriding objective set out in Order 58, Rule 1 of the **County Court Rules** (Northern Ireland) 1981 (as amended) ('the County Court Rules') applies to the planning and conduct of every remote hearing. The court's duty to deal with every case justly will include, so far as practicable:

- (a) ensuring that the parties are on an equal footing;
- (b) saving expense;
- (c) dealing with the case in ways which are proportionate to -
  - (i) the amount of money involved;
  - (ii) the importance of the case;
  - (iii) the complexity of the issues; and
  - (iv) the financial position of each party;
- (d) ensuring that it is dealt with expeditiously and fairly; and
- (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases.

The court must seek to give effect to the overriding objective when it -

- (a) exercises any power given to it by the Rules; or
- (b) interprets any Rule.

And similarly,

[II] 1.1 The overriding objective of the **Protocol on Criminal Case Management in The Magistrates' Court** is that criminal cases be dealt with justly.

1.2 Dealing with a criminal case justly includes:-

- (a) acquitting the innocent and convicting the guilty;
- (b) dealing with the prosecution and defence fairly;
- (c) recognising the rights of a defendant, particularly those under Article 6 of the European Convention on Human Rights;
- (d) respecting the interests of witnesses and victims and keeping them informed of the progress of the case;
- (e) dealing with the case efficiently and expeditiously;
- (f) ensuring that appropriate information is available to the court when issues of bail and sentence are considered; and
- (g) considering any need for non-statutory reporting restrictions, and
- (h) dealing with the case in ways that take into account:-
  - (i) the gravity of the offence alleged;
  - (ii) the complexity of what is in issue;
  - (iii) the severity of the consequences for the defendant and others affected; and
  - (iv) the needs of other cases.

3. The ability of the court to give full effect to its overriding objective may sometimes be constrained having regard, *inter alia*, to limited human, logistical and technological support and facilities. This does not detract from Overarching Principle 2.1 above.

#### 4. **Procedures**

- 3.1 Any relevant Practice Direction, Practice Note or Protocol applies to every remote hearing, subject to such modifications as may be specified in or inferred from this Guidance or in any order or direction of the court whether upon the application of any party or upon the court's own motion.
- 3.2 To protect the confidentiality and integrity of family and children's proceedings, for the purposes of call-overs in family courts the list – and the timing – for these will be split up between:
  - 3.2.1 those cases involving legal representatives only (which is likely to be the majority); and
  - 3.2.2 those cases where the legal representatives will be accompanied by a client or where a party is a litigant in person.
- 3.3 The list at 3.2.1 will be dealt with at a time published for the relevant court. The list at 3.2.2 will then be dealt with separately at a designated time directed by the judge on the same day. It is the responsibility of the legal representatives to inform the court office if their clients intend to participate in the call-over so as to ensure that the case is allocated to the appropriate list and to ensure that their client leaves the call when their case concludes.

##### *Court Papers*

- 3.4 As the court does not have the capacity or resources to make printed versions of any document submitted electronically no such document shall be printed for the judge or for any other purpose, with the exception of any document specifically authorised by this Guidance or by order or direction of the court to be provided electronically. Electronic copies will not be saved, stored or form part of the court record.
- 3.5 Hearing bundles, reports etc. should, therefore, continue to be delivered physically to the court, in appropriate numbers, in the usual way and well in advance of the hearing. Where the absence of a physical document would cause undue delay to the proceedings, electronic documents may be authorised by order or direction of the Court, to be displayed in court using Sightlink facilities. Where this facility is to be used the participant with possession of the document must clearly identify and display the relevant documents (or section

thereof) to the Court (*note the Court Clerk does not have access to the function to do this*).

*General Etiquette*

- 3.6 It must be remembered that even when business is conducted remotely by telephone or live video link it is still a court hearing and the usual rules about rights of audience continue to apply.
- i. Thus if counsel appears with an instructing solicitor it is important that the usual proprieties are observed and that the court is ordinarily only addressed by counsel unless otherwise invited by the judge.
  - ii. The language and forms of address used should continue to be that of the court – including the manner of addressing the bench and referring to the other party's representatives, as should any remarks or asides. It may occasionally be appropriate for the judge to remind participants of this.
  - iii. The oath/affirmation should be administered remotely in the hearing of all participants by the clerk (the witness will have received instructions to have to hand a bible / other holy book where they wish to take an oath).
  - iv. The court should be afforded the courtesy of being informed what method is being used to obtain instructions from the client during the course of the remote hearing – WhatsApp closed groups or Facebook Messenger are among the means which can be employed for these purposes. These should be disclosed at the outset.
  - v. While it will be important to carry out the business in the hearing efficiently and within a reasonable timeframe it should also be borne in mind – particularly in hearings of longer duration – that it may be appropriate to build in regular breaks in the proceedings especially where non-lawyers are active participants.
  - vi. In criminal trials judges should bear in mind that they may need to build in some additional time in applicable cases to allow for Victim Support or Young Witness Service: a. to be notified that their services are required (*via* Victims & Witness Care Unit); and, b. to arrange appropriate support of the witness when listing cases for contest, trial and sentence.

*When the hearing commences*

- 3.7 The presiding judge shall at the commencement of the hearing convene, formally, the business of the hearing. The judge may wish to address, *inter alia*, the following issues in any initial comments:
- Confirm that all present are those expected to be so (as on the list) and no unauthorised person is in attendance;

- Confirm that all participants can hear and be seen and heard<sup>5</sup> but remind participants to have their devices on mute at all times until invited by the judge to speak (the judge will want to ensure that his/her device is also on mute when not addressing remarks to the court/hearing participants - If a judge is using their laptop in court and there is a VC unit in court also, then both laptop and Sightlink must be on mute throughout the proceedings. Microphones in court will pick up the judge speaking for remote participants to hear);
- Confirm that all participants are in a quiet and private space;
- Confirm that all representatives are fully instructed;
- Confirm what the specific scope and purpose of the convened hearing is (if there are issues not previously adverted to which the judge wishes to have addressed during the hearing the judge should state these clearly at this point);
- Where one or more party is a litigant in person ('LIP') the judge should be particularly diligent to ensure - both at the outset and during the course of the hearing - that the LIP: understands the relevance of any points raised; is able to follow the proceedings; is able to make him or herself understood; is able to introduce and respond to relevant issues and understand the consequences of decisions or court directions; understands the process, procedures and legal terms; and has sufficient space and time to consider his or her response.
- Remind all that it is an offence under the Coronavirus Act 2020 to make any unauthorised recording of the proceedings and that no screenshots, screengrabs or other images should be taken of what is on the screen during the hearing;
- Remind all that only representatives (or LIP if unrepresented) should speak unless invited to by the court;
- Remind all that the remote hearing is still a hearing in court and that all usual rules apply including those relating to contempt of court;
- Indicate that late submission of documents – particularly in hard copy – without some extenuating reason may mean they will not be

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<sup>5</sup> If it is not possible to achieve this by video means, the hearing should be constituted as an audio hearing, (which may have some video aspects) - See [Schedule 27 of the Coronavirus Act 2020](#): Part 1 Paragraph 6 and Part 3 Paragraphs 9 – 14

considered<sup>6</sup>; particularly in a hybrid hearing where some are physically before the court while others are remote and;

- Confirm the ground rules for the hearing including:
  - a. No one to speak when someone else is speaking – no interruptions – and microphones should be on mute when a participant is not speaking (however this is not intended to preclude a legitimate intervention on the part of counsel or a litigant in person during the course of another's submissions);
  - b. Only start speaking when invited to by the judge;
  - c. Documents referred to should be identified by title and then page/tab number, where appropriate;
  - d. The judge should also ask the parties who will give evidence in the proceedings to confirm that they are alone in the room from which they are giving evidence (or declare to the court where they are accompanied by their legal representative, or other person in a support role) and that there is no one at hand physically or by some electronic means to prompt them with the answers that they give under examination.

*When the hearing concludes*

- 3.8 At the conclusion of the remote hearing the presiding judge will ordinarily:
- Confirm with representatives / LIP that all issues have been covered;
  - Confirm that there are no matters not yet covered;
  - Pronounce the full particulars of the decision/order of the court;
  - Alternatively, inform the parties/legal (or other) representatives of the timetable of any reserved or more fully reasoned decision or order.
  - If adjourning a part heard case, advise the participants of the next hearing date or indicate that the case will resume on a date to be fixed.

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<sup>6</sup> With regards to paper handling the Public Health Agency guidance is that good hand hygiene should be adopted, including regular hand washing (warm water and soap for at least 20 seconds); using alcohol gel as a temporary measure when hand washing isn't possible and individuals avoiding touching their face (especially mouth and nose areas)

- Formally direct that the remote hearing is concluded and require all participants to disconnect forthwith.

#### **4. Technical and Other Matters**

- 4.1 The court office will provide parties and legal representatives with the necessary technical information and details relating to any forthcoming remote hearing in advance (Sightlink numbers are also displayed on court lists online). This will typically include written guidance on the use of Sightlink, including the electronic display of documents to the court. Practitioners may also wish to avail of any training or guidance sessions facilitated by the Law Society or Bar Library on the use of Sightlink.
- 4.2 Every proposed remote hearing participant (using the technology for the first time) will preferably test the relevant technical mechanism where possible in advance of the scheduled remote hearing date and should advise the court office of any technical or other problems by email or telephone as soon as these are identified.
- 4.3 Each party appearing remotely, should select the location for the conduct of every remote hearing with a view to ensuring the recognition and promotion of the integrity of the court, the formality of court proceedings and the administration of justice generally. For legal representatives suitable locations would include a solicitor's office, the meeting space at Law Society House, a private study or a private room in The Bar Library.
- 4.4 The judge and counsel will be robed appropriately in accordance with the prevailing practice of the court in question unless circumstances as determined by the court render this unfeasible, in which case business attire shall be worn.
- 4.5 Subject to paragraph 4.4, business attire is required of all legal practitioners.
- 4.6 The names and contact particulars of every proposed participant will be provided (a) in every completed [HR1 Form](#)<sup>7</sup> and (b) where applicable, at the conclusion of each party's skeleton argument. This list may be amended in advance of the remote hearing with the leave of the court and on notice to every other party.
- 4.7 Where practicable, at the beginning of every remote hearing legal representatives announcing their appearance will also provide particulars of every other person attending at the remote location.

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<sup>7</sup> Or other similar form detailing this information where this has been directed by the Court

- 4.8 Where practicable, the relevant legal representative, or party, will also inform the court of (a) the arrival of any person not present at the beginning of the remote hearing (b) the proposed departure of any participant from the remote hearing prior to its conclusion, and (c) the unexpected departure of any required participant from the remote hearing e.g. where they have lost connection.
- 4.9 The “presence” of every participant in a remote hearing entails physical attendance at the relevant distant location/s and visible and audible participation from beginning to end unless otherwise authorised by the presiding judge. The court camera should be set to judge view for fully remote hearings, and court view for hybrid hearings. If the court view does not facilitate the view of the judge due to the position of the camera, then the judge is required to connect to Sightlink via their laptop and become a participant that way (with both laptop and Sightlink muted to avoid feedback).
- 4.10 Earphones or headphones with a microphone may be worn in order to enhance the quality of communication.
- 4.11 Microphones should be muted at all times unless invited to speak, and must be muted when another person is speaking.
- 4.12 It is not expected that judges will wear facemasks during remote hearings as they are highly likely to be in a room on their own, for instance their chambers, or in a courtroom in which social distancing measures have been implemented.
- 4.13 Other participants may wish to wear a facemask and this should be dealt with sensitively by judges to ensure that those participants feel comfortable taking part in the proceedings (particularly when sharing a location with other participants) whilst bearing in mind that anyone who is speaking in court must be capable of being understood over the remote link. It is likely that witnesses will be asked to remove their facemask while giving evidence.
- 4.14 At the outset of every remote hearing the presiding judge will normally summarise orally the basic protocol to be observed in terms noted above at 3.7.
- 4.15 The conventional sequence of oral presentations to the court will apply unless otherwise directed in advance or by the presiding judge. Where a party or legal representative wishes to make an intervention, permission should be sought by raising one’s hand or by means of some other discreet mechanism.
- 4.16 All participants may address the court seated, unless otherwise directed by the court.

- 4.17 Where the court considers it appropriate to do so, the affirmation/oath will be administered from the remote court location ordinarily by the court clerk.
- 4.18 As in the context of conventional hearings, permission to confer privately may be requested of the presiding judge by a participant at any stage. In such circumstances the presiding judge will make appropriate directions to ensure the privacy of such communications.
- 4.19 The only permanent recording of the proceedings will be that made by the court where this is the practice and no other party or individual is permitted to make any video or audio or other recording or image whatsoever of any part of the proceedings. This absolute prohibition includes the use a ‘screenshot’ or ‘screengrab’ and all similar functions.
- 4.20 Any breach of this prohibition is likely to be considered a contempt of the court in question with possible resulting imprisonment or other penalty and/or a criminal offence under The Coronavirus Act 2020.
- 4.21 Any court audio recording of remote hearings may be requested, procured and utilised in accordance with existing arrangements.
- 4.22 The court will take reasonable steps to ensure that the hearing is of an open and public character in order to safeguard the open justice principle, including by seeking to give notice to the media of any remote hearing and by providing the option of personal or remote attendance.
- 4.23 The customary arrangements and requirements relating to the confidentiality of family and children’s cases (and where the convention rights of a participant or affected person are adjudged to outweigh the open justice principle in a given instance) shall apply unless otherwise directed. All those involved have a responsibility to ensure that confidentiality is maintained.

## **5. Commencement and Review**

- 5.1 Elements of this Guidance will already have been in practical operation in earlier cases.
- 5.2 This Guidance will come into operation as soon as it is published and shall apply to every remote hearing thereafter.
- 5.3 The content and operation of this Guidance may be reviewed as appropriate, taking into account, *inter alia*, changes in circumstances and feedback from professional bodies and others.